

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )  
 )  
Implementation of the Local Competition )  
Provisions in the Telecommunications )  
Act of 1996 )  
 )

CC Docket No. 96-98

**COMMENTS OF MCLEODUSA TELECOMMUNICATIONS SERVICES, INC.**

McLeodUSA Telecommunications Services, Inc. (McLeodUSA)<sup>1</sup> hereby submits these comments on the *Second Further Notice of Proposed Rulemaking* (FNPRM) issued by the Federal Communications Commission (FCC or Commission) in the above-captioned case. McLeodUSA supplies competitive local exchange services in 12 Midwestern and Rocky Mountain states.<sup>2</sup>

**Introduction**

McLeodUSA is one of the oldest CLECs operating in the United States, having begun providing competitive switched local exchange services in Iowa in January 1994, two full years before the passage of the Telecommunications Act. McLeodUSA is also one of the largest CLECs currently operating, and in many of its markets is the only local service alternative to the incumbent LEC. As of March 31, 1999, McLeodUSA provided competitive local exchange services to over 143,000 residential and small business customers, with over 395,000 local lines.

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<sup>1</sup> For purposes of these comments, "McLeodUSA" includes other subsidiaries of McLeodUSA Incorporated which provide competitive local exchange services.

<sup>2</sup> Michigan, Indiana, Illinois, Wisconsin, Minnesota, Iowa, Missouri, North Dakota, South Dakota, Nebraska, Wyoming, and Colorado.

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McLeodUSA currently provides the bulk of its CLEC services by reselling the underlying services of the incumbent RBOC in the region. In Michigan and in certain areas of Illinois, Iowa, South Dakota, and Wisconsin, however, McLeodUSA provides service using either unbundled loops leased from the incumbent provider, or its own facilities direct to the customer. McLeodUSA anticipates that the use of unbundled network elements to provide service will increase in the future, and therefore has a substantial interest in the outcome of this proceeding.

In general, McLeodUSA concurs in the comments of the Association for Local Telecommunications Services (ALTS) in this proceeding. These specific comments are offered based on the substantial experience of McLeodUSA in providing competitive local services, and the problems that have been encountered in providing those services.

**I. The Importance of National "Baseline" Unbundling Standards Cannot Be Overemphasized.**

As noted above, McLeodUSA currently provides local service in 12 states in the Midwest and Rocky Mountain regions. Because of the scope of McLeodUSA's operations, and because McLeodUSA has been operating longer than most other CLECs, the need for "baseline" national unbundling standards has become apparent.

States, and state regulatory commissions, vary widely in the size and expertise of their staffs, in their governing legislation, and in their general attitudes toward competition. Because of this, the effective development of competition requires that some "minimum" set of standards be put in place that can serve as a "baseline" for the regional or national operations of a CLEC. Specifically, these baseline standards would mean that, no matter what state was involved and

regardless of the predilections or abilities of any given commission and its staff, the CLEC could count on certain network elements being available, and could structure its business plan accordingly. States should be allowed to require that additional network elements be unbundled and provided if they so choose, but no state should be allowed to drop below this baseline level.

It is also important to recognize that this baseline level will be needed most in those states that, for whatever reason, have difficulty in implementing procompetitive policies. Thus, the Commission should set the baseline requirements in such a way that competition can develop even in those states where otherwise procompetitive policies might not exist. Only in this way can the goals of the Act be met.

It must also be recognized that the rules adopted in this docket should not be expected to be the "final word" on unbundling. As circumstances change, the Commission's rules on unbundling can, and should, be revisited. Thus, the Commission need not determine currently whether, in several years, an effective competitive market will have developed which might render a particular unbundled element unnecessary. The ability will always exist to adjust these elements in the future. That ability, however, should be left to the FCC, however, and not to the states.

## **II. The Commission Should Adopt a Narrow View of What Constitutes a "Proprietary" Network Element.**

McLeodUSA agrees with the comments of ALTS on this subject, and offers this addition only to point out the practical effects of whatever definition is adopted. McLeodUSA has been denied access to various RBOC databases because of the allegation that such databases are

"proprietary," even though they are based on and conform to prevailing industry standards. Thus, McLeodUSA has been denied access to RBOC databases which show the availability of cable pairs, or the type of digital loop carrier deployed in a particular location, even though RBOC personnel have access to this database, the database is based on industry standards, and the lack of such database access places McLeodUSA at a distinct disadvantage in determining whether it can effectively provide service to customers. The Commission should make it clear that information such as that contained in such databases must be available, as part of the availability of OSS, whenever relevant technical information is available.

### **III. The "Impair" Standard Contained in Section 251(d)(2)(B) Must Be Interpreted In the Context of Customer Expectations.**

It is tempting to consider the "impair" standard contained in Section 251(d)(2)(B) as a technical standard, relating to the construction and operation of a telecommunications network. Such an interpretation, however, does violence to the procompetitive purpose underlying the Act. Instead, in determining whether the lack of a particular network element would impair the ability of a CLEC to provide service, the Commission should adopt the point of the view of the customer, and should apply the customer's perceptions and criteria to that determination. The difference in the two points of view can be seen in a simple example.

Suppose that Network Element X is made available by deploying equipment X. A CLEC wishes to buy Network Element X from an incumbent carrier. It would be possible for the CLEC to purchase and deploy equipment X and provide Network Element X for itself; and thus, from a technical network standpoint, the CLEC's ability to provide service is arguably not

"impaired" if Network Element X is unavailable from the incumbent. From the ultimate end-user customer's perspective, however, lack of availability of Network Element X must be judged by an entirely different standard. From this perspective, the relevant question is "If Network Element X is unavailable from the incumbent, would the CLEC be able to provide the same service to the end-user customer, with the same economies, in the same time frame, and with same reliability, as the incumbent?" If the answer to this question is "No," then the unavailability of Network Element X as an unbundled network element necessarily impairs the ability of the CLEC to provide service.

There are multiple dimensions to this question, any one of which would justify the availability of a particular network element. Ubiquity, economies of scale and scope, availability, constrained capital resources, and the lag times associated with new construction, all may lead to the conclusion that a particular element should be available to CLECs as a UNE. Again, these circumstances may change over time, and the Commission should be ready to revisit its rules in the future as market conditions and facility availability develop. Those potential future developments, however, should not be used to limit the current availability of UNEs.

The "impair" standard contained in the Act must be applied as a customer-oriented, market-based test, rather than as a "network functionality" test. If a CLEC cannot provide service to a customer in an equivalent time frame, with equivalent economies, and equivalent service reliability in the absence of the UNE, then the CLEC's ability to provide service will be "impaired" in the absence of the UNE. The Commission should fashion its list of UNEs with this test in mind.

#### **IV. The Commission Should Expand its Current List of UNEs.**

McLeodUSA believes that there are no elements in the current list of UNEs contained in the Commission's rules that should be removed. This includes unbundled switching, which McLeodUSA believes to be the most controversial item. Although McLeodUSA has no current plans to rely upon unbundled switching to provide service to its customers, it believes that such a business plan should not be foreclosed to other competitors who may believe that approach is the best way to provide competitive local exchange services.

The FCC's current UNE list does need to be expanded, however, in two different ways. First, the definitions of the existing UNEs need to be expanded to remove the "loopholes" exploited by some RBOCs to avoid making the UNEs actually available; and second, the list of UNEs itself needs to be expanded to cover certain additional elements.

With respect to changes to existing UNE definitions, perhaps most important is the need to further refine the requirements concerning unbundled local loops. Subloop unbundling at remote terminals or other technically feasible points with the incumbent's network should specifically be allowed, and the availability of "dark fiber" loops should be included. Equally important, however, is the need to further define the conditions under which loops are to be provided. Specifically, McLeodUSA has faced numerous situations where special construction charges would be imposed on an order for an unbundled loop, making service to the customer financially infeasible. McLeodUSA has faced these special construction charges even though the RBOC in question does not charge its own customers those charges when identical service is ordered. Indeed, in at least one case, McLeodUSA is aware that after it declined to provide service to the customer in question, the customer ordered and received identical service from the

RBOC at the same address, paying no special construction charges whatsoever. When McLeodUSA challenged the RBOC on this blatantly discriminatory treatment, it was told an internal accounting transaction would "charge" the special construction costs to the RBOCs retail unit, which had the "choice" as to whether to pass those charges on to the end user. This movement of "accounting dollars" from the RBOC's right pocket to its left pocket is in no way equivalent to its demand that McLeodUSA pay real dollars if it wishes to provide service to the customer.

Such special construction costs arise most frequently in the context of "clean" loops needed for ISDN or other digital services, or when unbundled loops are required for customers currently served by DLC. In some cases, McLeodUSA is faced with thousands of dollars of special constructions costs in order to provide a service to a customer with a monthly revenue stream of \$30-\$40. Clearly, allowing such charges does not further the goal of competitive communications markets. Furthermore, such charges are generally inconsistent with the principles of TELRIC pricing relied upon for UNE prices. Such prices are based on forward-looking economic costs, using the most currently available technology. These prices should already reflect the costs of a network that can provide unbundled loops of all types. The Commission should make it clear in its rules that the TELRIC cost principles applying to unbundled elements forbid these types of special construction charges. In the alternative, damage to the development of competition could be limited if special construction charges were applied to CLECs only in cases where the RBOC's own end-user customer would also pay those charges. Such an explicit requirement might eliminate many of the ploys currently used to limit McLeodUSA's ability to provide service.

Similarly, the definitions of OSS should be expanded to explicitly require that systems be developed to provide for the processing of orders (for both UNEs and for resale services) from CLECs without manual intervention. Since it began providing service, McLeodUSA has faced problems caused by resource limitations at the RBOCs, which have limited its ability to serve new customers. These problems have been caused largely by the manual intervention required to process McLeodUSA's service orders. While steps have been taken to mechanize parts of this process, there has been no commitment on the part of McLeodUSA's suppliers to work toward the goal of a system in which no manual intervention is required to process orders. Expansion of the definition of OSS as a UNE could eliminate this problem.

As noted above, not only do the definitions of network elements need to be expanded, but the list of elements to be unbundled itself also requires expansion. McLeodUSA concurs in the comments of ALTS on this subject, and offers the following additional comments.

Extended Links should be explicitly recognized as a new network element. As McLeodUSA has established collocation arrangements in more central offices, it has become apparent that timely implementation and turnup is a major issue. The need for additional collocation arrangements, and thus the opportunity for additional delays, can be reduced if extended links are made available. Like all other UNEs, these links should be priced based on TELRIC costs.

The existence of new UNEs associated with data services should also be recognized in the Commission's rules. Specifically, CLECs may be unable to provide service with the same speed, reliability, cost, and ubiquity if network elements used to provide data services are not unbundled. Thus, DSLAMs, packet switches, and similar equipment, should be available at



TELRIC prices as UNEs. This must include the ability for the CLEC to provide both voice and data services over the same loop, as is done by incumbent carriers.

McLeodUSA recognizes that this list of UNEs is extensive. Some incumbent carriers may argue such a widespread availability of UNEs will eliminate the incentive for CLECs to construct alternate facilities. In McLeodUSA's experience, this argument is simply wrong. There are inherent "frictions" in dealing with an incumbent RBOC, and in using the network elements of that RBOC to provide service. If McLeodUSA has the ability to provide a function for itself at an equivalent cost, rather than purchase the function as a UNE from an RBOC, it will do so (as long as it is not constrained by timing, resource availability, or some other factor). In fact, in order to avoid the "frictions" of the RBOC transaction and gain control over the facility itself, McLeodUSA would elect to "self-provision" even if the costs of the facility itself were slightly higher than the cost to acquire the function as a UNE. Thus, the result is a process in which McLeodUSA utilizes UNEs only when it cannot feasibly acquire equivalent functionality in a reasonable alternative way. This means that the incentive to install facilities, and to use those facilities in preference over UNEs, continues to operate. The Commission need not fear that an expansive list of UNEs will doom the existence of alternative networks. In McLeodUSA's experience, such availability will likely enhance construction of these networks, allowing competitors to use UNEs for market entry while their own networks are constructed.

### **Conclusion**

The Commission, when it adopted its original rules in 1996, did a commendable job of using its expertise and experience at the time to produce a list of network elements that would

foster the development of competition in local exchange markets. The opportunity to revisit these rules, as required by the Supreme Court, should be used to build on the experience of the last three years. With an understanding of how the lack of UNEs can impair the ability of a CLEC to provide service, judged from a customer's view, and of how RBOCs have used the Commission's rules over the last three years in an attempt to delay competition, the Commission is in a better position than ever to produce a list of network elements that can accelerate the development of competition and the deployment of competitive advanced services throughout the United States.

Respectfully Submitted,

A handwritten signature in black ink that reads "David R. Conn". The signature is written in a cursive, flowing style.

David R. Conn  
Vice President - Law and Regulatory Affairs

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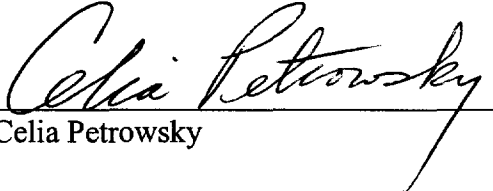
**CERTIFICATE OF SERVICE**

I, Celia Petrowsky, hereby certify that on this 26th day of May 1999, I have served copies of the foregoing Comments of McLeodUSA Telecommunications Services, Inc. on the following via hand delivery:

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